

2009 DRAFTING REQUEST

Bill

Received: 11/20/2009

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget (608) 267-9546**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **tdodge**

May Contact:

Addl. Drafters:

Subject: **Insurance - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Jablonsky, BB0236 -

Topic:

Oversight of care management organizations by Office of the Commissioner of Insurance

Instructions:

See attached. See also LRB 09-0889.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	tdodge 01/23/2009	csicilia 01/23/2009	rschluet 01/23/2009	_____	cduerst 01/23/2009		
	tdodge 01/27/2009	csicilia 01/27/2009		_____			
/P2	tdodge 01/28/2009	kfollett 01/28/2009	phenry 01/27/2009	_____	mbarman 01/28/2009		
/P3			phenry 01/29/2009	_____	sbasford 01/29/2009		

FE Sent For:

<END>

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/P2		1P3 kf 1/28	phenry 01/27/2009	1/29	mbarman 01/28/2009		

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ph/MD
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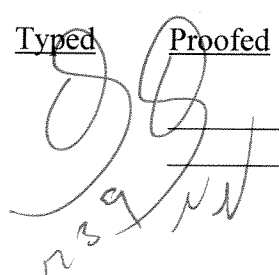
Oversight of care management organizations by Office of the Commissioner of Insurance

Instructions:

See attached. See also LRB 09-0889.

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/P1	tdodge						

Handwritten signature and initials, possibly 'tdodge' and 'Jablonsky', over the Drafting History table.

FE Sent For:

<END>

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: TJD) (Date: 01 / 23 / 2009)



☐ Please transfer the drafting file for
~~2007~~ ²⁰⁰⁹ LRB 0889 to the drafting file
for **2009 LRB** 1658

The final version of the 2009 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2007 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2007 draft was incorporated into a new 2009 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the 2009 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--OR--

☐ Please copy the drafting file for
2009 LRB / (include the version) and place it in the
drafting file for **2009 LRB**

For research purposes, because the original 2009 draft was incorporated into another 2009 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the new 2009 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

Dodge, Tamara

From: Jablonsky, Sue - DOA [sue.jablonsky@wisconsin.gov]
Sent: Thursday, January 08, 2009 11:27 AM
To: Fox, Sabrina E - DOA; Dodge, Tamara
Subject: FW: Family Care draft
Attachments: Chapter 648 112408-2.doc

From: Mallow, Eileen K - OCI
Sent: Tuesday, November 25, 2008 10:06 AM
To: Lawless, Thomas M - DHS; Malofsky, Shelley F - DHS
Subject: FW: Family Care draft

Tom and Shelley – here's the revised draft of the Family Care legislation. Please let me know if you have any comments or would like to get together again. I know DOA is interested in getting the draft as soon as possible.

Eileen Mallow
Assistant Deputy Commissioner
608-266-7843
608-261-8579 (fax)
eileen.mallow@wisconsin.gov

From: Nepple, Fred - OCI
Sent: Monday, November 24, 2008 5:24 PM
To: Mallow, Eileen K - OCI
Cc: Walsh, Julie E - OCI
Subject: Family Care draft

Create 20.145 (1) (g) 4:

20.145 (1) (g) 4. All moneys received under s. 601.455 by the commissioner of insurance that are not allocated by the commissioner to the department of health services, for expenses related to administering ch. 648.

Create 20.435 (4) (am) and (ap):

20.435 (4) (am) All moneys received under s. 601.455 by the commissioner of insurance that are allocated by the commissioner to the department of health services, for expenses related to financial monitoring and analysis of care management organizations that are subject to ch. 648.

20.435 (4) (ap) All moneys received under s. 648.30 from an assessment for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees or participants of an insolvent or financially hazardous care management organization.

Amend s. 601.42 (4) and (7):

601.42 (4) Replies. Any officer, manager or general agent of any insurer authorized to do or doing an insurance business in this state or of a person subject to ch. 648, any person controlling or having a contract under which the person has a right to control such an insurer or person, whether exclusively or otherwise, any person with executive authority over or in charge of any segment of such an insurer's or person's affairs, any individual practice association or officer, director or manager of an individual practice association, any insurance agent or other person licensed under chs. 600 to 646, any provider of services under a continuing care contract, as defined in s. 647.01 (2), any independent review organization certified or recertified under s. 632.835 (4) or any health care provider, as defined in s. 655.001 (8), shall reply promptly in writing or in other designated form, to any written inquiry from the commissioner requesting a reply.

(7) Experts. The commissioner may employ experts to assist the commissioner in an examination or in the review of any transaction subject to approval under chs. 600 to ~~646~~ 648. The person that is the subject of the examination, or that is a party to a transaction under review, including the person acquiring, controlling or attempting to acquire the insurer or person, shall pay the reasonable costs incurred by the commissioner for the expert and related expenses.

Amend s. 601.43 (1) (a) and (d):

601.43 (1) (a) *Insurers, other licensees and other persons subject to regulation.* Whenever the commissioner deems it necessary in order to inform himself or herself about any matter related to the enforcement of chs. 600 to ~~647~~ 648, the commissioner may examine the affairs and condition of any licensee or permittee under chs. 600 to ~~647~~ 648 or applicant for a license or permit, of any person or organization of persons doing or in process of organizing to do an

insurance business in this state, and of any advisory organization serving any of the foregoing in this state.

(d) *Delivery of records to the office.* On order of the commissioner any licensee or permittee under chs. 600 to ~~647~~ 648 shall bring to the office for examination such records as the order reasonably requires.

Amend s. 601.44 (5) to (8) and (10):

601.44 (5) Report on examination. The examiner in charge of an examination shall make a proposed report of the examination that shall include such information and analysis as is ordered in sub. (1), Together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or the examinee's representatives at the option of the examiner in charge. Except for a proposed report of an examination of a permittee under ch. 648, The a proposed report shall remain confidential until filed under sub. (6).

(6) Adoption and filing of examination report. The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under ch. 227, except that on demand by the examinee the hearing shall be private. Within 60 days after the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for public inspection, or the commissioner shall order a new examination. This subsection does not apply to a proposed report of an examination of, or an examinee that is, a permittee under ch. 648.

(7) Copy for examinee. The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee. This subsection does not apply to a proposed report of an examination of, or an examinee that is, a permittee under ch. 648.

(8) Copies for board. The examinee shall forthwith furnish copies of the adopted or finalized report to each member of its board.

(10) Report as evidence. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding commenced under ch. 645 or ch. 648, the examination report whether adopted by the commissioner or not shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

Create s. 601.45 (6):

601.45 (6) this section does not apply to permittee or care management organization subject to ch. 648.

Create s. 601.455:

601.455 Care management organization costs.

(1) Costs to be paid by care management organizations. The reasonable estimate of costs of examinations under ss. 601.43 and 601.44 of care management organizations, review of applications, and financial monitoring and analysis of care management organizations by the office and the department of health services, including overhead and fixed costs, shall be paid by permittees under ch. 648 by a system of regular annual billings.

(2) Duty to pay. The commissioner shall annually determine the estimated costs subject to sub. (1) for the office and the department of health services. The commissioner shall serve a request for payment on each person who is a permittee allocating the cost to each permittee in an amount that the commissioner determines reflects the permittee's proportionate share of estimated capitation in the next annual period. The permittee shall pay the amount determined by the commissioner within 10 days service of the request for payment.

(3) Offset. The department of health services may collect and remit amounts due under this section by deduction from payments otherwise due from he department of health services to the care management organization.

Amend s. 601.465 (1m) (c) 5:

601.465 (1m) (c) 5. An international, federal, state or local regulatory or law enforcement agency, including the department of health services.

Amend s. 601.64 (3) (a):

601.64 (3) (a) *Restitutionary forfeiture.* Whoever violates an effective order issued under s. 601.41 (4), any insurance statute or rule, ~~or s. 149.13~~ or ch. 648 shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

601.64(3) (b)

(b) *Forfeiture for violation of order.* Whoever violates an order issued under s. 601.41 (4) which is effective under s. 601.63 shall forfeit to the state not more than \$1,000 for each violation. Each day that the violation continues is a separate offense.

(c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule, ~~or s. 149.13~~ or ch. 648, intentionally aids a person in violating an insurance statute or rule, ~~or s. 149.13~~ or ch. 648, or knowingly permits a person over whom he or she has authority to violate an insurance statute or

rule, or s. 149.13 or ch. 648 shall forfeit to the state not more than \$1,000 for each violation. If the statute or rule imposes a duty to make a report to the commissioner, each week of delay in complying with the duty is a new violation.

(4) Criminal penalty. Whoever intentionally violates or intentionally permits any person over whom he or she has authority to violate or intentionally aids any person in violating any insurance statute or rule of this state, s. 149.13, ch. 648, or any effective order issued under s. 601.41 (4) is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the statutes. Intent has the meaning expressed under s. 939.23.

Create ch. 648:

Chapter 648

648.01 Definitions. In this chapter:

- (1) "Care management organization" means a person certified by and under contract with the department in accordance with s. 46.284 to provide long-term care support and health care management to Medicaid eligible adults with developmental or physical disabilities or Medicaid eligible adults identified by the department as frail elders as defined at s. 46.2805 (6v).

"Care management organization" does not include any of the following:

- (a) A person who contracts to provide a program of all-inclusive care for the elderly under 42 USC 1395eee or 1396u-4.
- (b) A person who contracts to provide a program known as the Wisconsin partnership program under a federal waiver authorized under 42 USC 1315.
- (c) An insurer subject to regulation under chs. 600 to 646, including an insurer who contracts with department to provide services that include hospital, physician or other acute care services.
- (d) Any other person the commissioner exempts from this chapter.

- (2) "Department" means the department of health services.

- (3) "Permittee" means a person issued a permit under this chapter.

648.02. Permit Required. (1) Care management organization permit. After December 31, 2009 a care management organization may not provide services under a contract with the department unless it has a permit under this chapter.

(2) Application. A care management organization applying for a permit shall submit all of the information required by the commissioner, in the required form, including:

- (a) Except as otherwise permitted by the commissioner, the names, and for the preceding 10 years, all addresses and all occupations of all controlling persons and directors and officers.
- (b) Business organization documents, including articles and bylaws if applicable.
- (c) A business plan approved by the department, including a projection of the anticipated operating results at the end of each of the first 3 years of operation, based on reasonable assumptions of income and operating expenses.
- (d) Such other relevant documents or information as the commissioner reasonably requires.

(3) Permit standards. The commissioner may issue a permit if the commissioner finds all of the following:

- (a) All requirements of law have been met.
- (b) All the directors and principal officers of any controlling person and are trustworthy and competent and collectively have the competence and experience to engage in the proposed services.
- (c) The business plan is consistent with the interests of the person's clients and the public.
- (d) The care management organization is certified by, and contracts with, the department to participate in the care management program.

648.05 Powers of the Commissioner. (1) Enforcement authority. The commissioner shall administer and enforce this chapter. The commissioner has the authority and power provided under ss. 601.41, 601.42, 601.43, 601.44, 601.62, 601.63, and 601.64 to enforce this chapter.

(2) Discipline. The commissioner may suspend or revoke a permit under this chapter if the commissioner finds:

- (a) The permittee violated a law or rule, including a rule setting financial standards.
- (b) The permittee is in financially hazardous condition.
- (c) The permittee is controlled or managed by persons who are incompetent or untrustworthy.
- (d) The permittee conceals records from the commissioner.

- (e) The permittee's business plan is not in the public interest or is not prudent.
- (f) The permittee ceases to be certified by the department or the permittee's contract with the department terminates.

(3) Standards set by rule. The commissioner may set standards for the financial condition of permittees by rule.

(4) Summary order. (a) The commissioner may make and serve an order on a permittee requiring it to cease and desist continuing to provide services under the department contract, or to take corrective measures, without notice and before hearing, simultaneously serving upon the permittee notice of hearing under s. 601.62, if:

1. It appears to the commissioner that irreparable harm to the property or business of the permittee or to the interests of its enrollees or participants, or the public, will occur unless the commissioner acts with immediate effect; and
2. The permittee is not in compliance with financial standards, or grounds exist to suspend or revoke the permit,

(b) An order issued under this subsection is effective immediately. The permittee has the rights provided under s. 601.62.

(c) The commissioner may keep proceedings under this subsection confidential.

648.10 Transactions with Affiliates.

(1) Information. A permittee, and a person attempting to acquire or having control of a permittee, shall report to the commissioner the information concerning the care management organization, its affiliates, and the person attempting to acquire control of the permittee that the commissioner requires by rule. The commissioner may promulgate rules prescribing the timing of reports under this subsection, including, but not limited to, requiring periodic reporting and the form and procedure for filing reports.

(2) Report for affiliates. A care management organization may report on behalf of all affiliated entities if it provides all the information that would be required if each entity reported separately.

(3) Consent to jurisdiction. Every permittee shall promptly submit to the commissioner a statement from each of its affiliates that the affiliate agrees to be subject to the jurisdiction of the commissioner and the courts of this state for the purposes of this chapter. A governmental unit is not subject to this requirement and the commissioner may exempt other affiliates.

(4) Information order. The commissioner may, by order, require any permittee, or any person attempting to acquire or having control of the permittee, to report information to the commissioner.

(5) Transactions with affiliates. Neither a permittee nor an affiliate of the permittee may enter into a transaction between the permittee and affiliate unless all of the following apply:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the permittee.

(b) The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and in accordance with generally accepted accounting principles permits ascertainment of charges relating to the transaction.

(c) The permittee's financial condition following any dividends or distributions to shareholders or a person having control of the permittee is reasonable in relation to the permittee's outstanding liabilities and adequate to its financial needs.

(d) The transaction complies with any other standard that the commissioner prescribes by rule.

(6) Transactions subject to disclosure and disapproval.

(a) Affiliated transactions to be reported. 1. The commissioner may promulgate rules requiring a permittee, a person attempting to acquire or having control of a permittee and affiliates of a permittee to report a transaction or a group or series of transactions, if all of the following are satisfied:

a. The transaction is between a permittee and a person attempting to acquire or having control of the permittee or an affiliate of the permittee, or the transaction directly or indirectly benefits the person or affiliate.

b. The transaction is, or the group or series of transactions are, material to the permittee.

2. Transactions that are material to a permittee for the purposes of subd. 1. include, but are not limited to, management contracts, service contracts and cost-sharing arrangements.

(b) No permittee, person attempting to acquire or having control of a permittee or affiliate of the permittee may enter into a transaction required to be reported to the commissioner under this subsection unless the permittee, person and affiliate report the transaction to the commissioner in the form and by the date before the effective date of the transaction that are prescribed by the commissioner by rule. The commissioner may not require the transaction to be reported earlier than at least 30 days before the effective date.

(b) Disapproval. The commissioner may, within the period prescribed in par. (a) disapprove any transaction reported under par. (a) if the commissioner finds that it would violate the law or would be contrary to the interests of clients, the department or the public.

(c) Transactions prohibited. No permittee, person attempting to acquire or having control of the permittee or affiliate of the permittee may enter into a transaction that is not reported as required under par. (a) or that is disapproved by the commissioner under par. (c).

(d) Voidable transactions. If a permittee, person attempting to acquire or having control of the permittee or affiliate enters into a transaction in violation of this section, the permittee may void the transaction and obtain an injunction and recovery from the person or affiliate of the amount necessary to restore the permittee to its condition had the transaction not occurred. The commissioner may order a permittee to void the transaction, to commence an action against the person or affiliate or to take other action.

(e) Required financial condition. The commissioner may promulgate rules for determining adequacy of financial condition under this section.

(f) Exemption if permittee reports. Par. (a) does not apply to a person attempting to acquire or having control of, or an affiliate of, a permittee, if the permittee reports on behalf of the person or on behalf of the affiliate and the transaction is not disapproved by the commissioner.

(7) Dividends and distributions.

(a) A permittee may not pay a dividend or distribution, and an affiliate of the permittee may not accept a dividend or distribution, unless the permittee reports the dividend or distribution to the commissioner at least 30 days before payment and the commissioner does not disapprove the dividend or distribution within that period.

(b) The commissioner may promulgate rules under this section including, but not limited to, rules:

1. Prescribing the form and content of and procedure for filing reports under this subsection.

2. Exempting dividends or distributions under conditions that the commissioner determines will not jeopardize the financial condition of the permittee.

(c) A permittee may declare a dividend or distribution that is conditioned upon the permittee's compliance with this subsection. A declaration of a dividend or distribution under this subsection does not confer rights to the dividend or distribution unless this subsection is complied with and is void if the dividend or distribution is disapproved by the commissioner.

(d) In addition to any remedies available, a permittee may recover from the recipient any dividend or distribution paid in violation of this subsection.

(8) Duties of officers and directors.

(a) No director or officer of a permittee or of an affiliate of a permittee may permit, participate in or assent to a transaction or payment or acceptance of a dividend or distribution prohibited under this chapter.

(b) An officer or director of a permittee or of an affiliate of a permittee who knows, or reasonably should know that the permittee or affiliate has entered into a transaction or paid a dividend or distribution that violates this chapter shall report the transaction, dividend or distribution to the commissioner in writing within 30 days after attaining that knowledge. Section 601.42 (6) applies to a report under this section and the report is confidential unless the commissioner finds it necessary to disclose the report for the purpose of enforcing this chapter.

648.15 Change in control.

(1) **Approval required.** No proposed plan of merger or other plan for acquisition of control of a permittee may be executed unless it has been approved by the commissioner.

(2) **Grounds for disapproval.** The commissioner shall approve the plan if the commissioner finds, after a hearing, that it would not violate the law or be contrary to the interests of the public, the department, or the enrollees or participants.

648.20 Enrollee hold harmless. (1) Hold harmless. An enrollee or participant of a care management organization is not liable for health care, service, equipment or supply charges that are covered under the care management organization's contract with the department.

(2) **Prohibited recovery attempts.** No person may bill, charge, collect a deposit from, seek remuneration or compensation from, file or threaten to file with a credit reporting agency or have any recourse against an enrollee, or participant, or any person acting on their behalf, for health care, service, equipment or supply charges for which the enrollee, participant or person acting on their behalf, is not liable under sub. (1).

(3) **Conditions not affecting the immunity.** The immunity of an enrollee or participant under subsections (1) and (2) is not affected by any of the following:

(a) A breach of or default on an agreement by the care management organization or failure of any person to compensate the provider.

(b) The insolvency of the care management organization or any person contracting with the care management organization or the commencement or the existence of conditions permitting the commencement of insolvency,

delinquency or bankruptcy proceedings involving the care management organization or other person, regardless of whether the care management organization or other person has agreed to compensate, directly or indirectly, the provider for health care, services, equipment or supplies for which the enrollee or participant is not liable under sub. (1).

(c) The inability of the provider or other person who is owed compensation for health care, services, equipment or supplies to obtain compensation from the care management organization.

648.30 Insolvency funding. (1) Deposit required. A permittee shall deposit an amount of not less than \$250,000 under s. 601.13.

(2) Release of deposit. A deposit under this section may be released only with the approval of the commissioner under s. 601.13 (10) and only in any of the following circumstances:

(a) To pay an assessment under sub. (3).

(b) To pay creditors of the permittee if the permittee is insolvent, dissolves or is subject to an insolvency proceeding, including a U.S. bankruptcy proceeding.

(3) Assessment. The department may assess an amount from each permittee's deposit for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees or participants of an insolvent or financially hazardous permittee. The department's assessment shall be allocated to each permittee's deposit in an amount that reflects the permittee's proportionate share of estimated capitation in the next annual period. The commissioner may authorize release, and the department of administration shall pay, the amount assessed to the department for the purposes of this subsection.

(4) Recovery. The department may recover, and may file a claim, or bring civil action, to recover, from the insolvent or financially hazardous permittee any amount that the department assesses and pays under sub. (3) Any amount recovered shall be restored to the permittee's deposit in the same proportion as the assessment.

(5) Restoration. A permittee shall restore its deposit that is subject to an assessment under sub. (3) within 30 days after the assessment, unless the office authorizes a longer period which shall not exceed two years.

Dodge, Tamara

From: Kahler, Pam
Sent: Tuesday, January 13, 2009 9:53 AM
To: Dodge, Tamara
Subject: FW: Chapter 648 changes
Attachments: Chapter 648_01132009.doc

Tami, I think this relates to your budget draft that creates the new chapter. Nice of them to send it to you.

From: Lawless, Thomas M - DHS [mailto:Thomas.Lawless@dhs.wisconsin.gov]
Sent: Tuesday, January 13, 2009 7:55 AM
To: Nepple, Fred - OCI; Mallow, Eileen K - OCI; Jablonsky, Sue; Kahler, Pam
Cc: Frye, Judith E - DHS
Subject: Chapter 648 changes

This version includes the changes we discussed last week in our work group meeting. Our starting point was the version sent by Fred on 12/23/08.

Tom Lawless
Fiscal Mngmnt. & Business Svcs. Sectn. Chief
Division of Long-Term Care
Wisconsin Department of Health Services
1 W. Wilson St., Room 518
Madison, WI 53702

Fax: (608) 266-5629
Phone: (608) 261-7810
Email: lawletm@dhfs.state.wi.us

Create 20.145 (1) (g) 4:

20.145 (1) (g) 4. All moneys received under s. 601.455 by the commissioner of insurance that are not allocated by the commissioner to the department of health services, for expenses related to administering ch. 648.

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Deleted: am

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20.435 (4) (am) All moneys received under s. 601.455 by the commissioner of insurance that are allocated by the commissioner to the department of health services, for expenses related to financial certification, monitoring, and analysis of care management organizations that are subject to ch. 648.

20.435 (4) (ap) All moneys received under s. 648.30 from an assessment for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees or participants of an insolvent or financially hazardous care management organization.

Amend s. 601.42 (4) and (7):

601.42 (4) Replies. Any officer, manager or general agent of any insurer authorized to do or doing an insurance business in this state or a care management organization, any person controlling or having a contract under which the person has a right to control such an insurer or care management organization, whether exclusively or otherwise, any person with executive authority over or in charge of any segment of such an insurer's or care management organization's affairs, any individual practice association or officer, director or manager of an individual practice association, any insurance agent or other care management organization licensed under chs. 600 to 646, any provider of services under a continuing care contract, as defined in s. 647.01 (2), any independent review organization certified or recertified under s. 632.835 (4) or any health care provider, as defined in s. 655.001 (8), shall reply promptly in writing or in other designated form, to any written inquiry from the commissioner requesting a reply.

Deleted: person

(7) Experts. The commissioner may employ experts to assist the commissioner in an examination or in the review of any transaction subject to approval under chs. 600 to 646 ~~648~~. The care management organization, that is the subject of the examination, or that is a party to a transaction under review, including the person acquiring, controlling or attempting to acquire the insurer or care management organization, shall pay the reasonable costs incurred by the commissioner for the expert and related expenses.

Deleted: person

Deleted: person

Amend s. 601.43 (1) (a) and (d):

601.43 (1) (a) *Insurers, other licensees and other care management organizations subject to regulation.* Whenever the commissioner deems it necessary in order to inform himself or herself about any matter related to the enforcement of chs. 600 to ~~647~~ 648, the commissioner may examine the affairs and condition of any licensee or permittee under chs. 600 to ~~647~~ 648 or applicant for a license or

Deleted: persons

permit, of any ~~care management organization or organization of persons doing~~ or in process of organizing to do an insurance business in this state, and of any advisory organization serving any of the foregoing in this state.

Deleted: person

(d) *Delivery of records to the office.* On order of the commissioner any licensee or permittee under chs. 600 to 647 648 shall bring to the office for examination such records as the order reasonably requires.

Amend s. 601.44 (5) to (8) and (10):

601.44 (5) Report on examination. The examiner in charge of an examination shall make a proposed report of the examination that shall include such information and analysis as is ordered in sub. (1), Together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or the examinee's representatives at the option of the examiner in charge. Except for a proposed report of an examination of a care management organization under ch. 648, The a proposed report shall remain confidential until filed under sub. (6).

(6) Adoption and filing of examination report. The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under ch. 227, except that on demand by the examinee the hearing shall be private. Within 60 days after the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for public inspection, or the commissioner shall order a new examination. This subsection does not apply to a proposed report of an examination of, or an examinee that is, a care management organization.

(7) Copy for examinee. The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee. This subsection does not apply to a proposed report of an examination of, or an examinee that is, a care management organization.

(8) Copies for board. The examinee shall forthwith furnish copies of the adopted or finalized report to each member of its board.

(10) Report as evidence. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding commenced under ch. 645 or ch. 648, the examination report whether adopted by the commissioner or not shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

Create s. 601.45 (6):

601.45 (6) this section does not apply to a care management organization subject to ch. 648.

Create s. 601.455:

601.455 Care management organization costs.

(1) Costs to be paid by care management organizations. The reasonable estimate of costs of examinations under ss. 601.43 and 601.44 of care management organizations, review of applications, and financial monitoring and analysis of care management organizations by the office and the department of health services, including overhead and fixed costs, shall be paid by permittees under ch. 648 by a system of regular annual billings.

(2) Duty to pay. The commissioner shall annually determine the estimated costs subject to sub. (1) for the office and the department of health services. The commissioner shall serve a request for payment on each care management organization who is a permittee allocating the cost to each permittee in an amount that the commissioner determines reflects the permittee's proportionate share of estimated capitation in the next annual period. The permittee shall pay the amount determined by the commissioner within 10 days service of the request for payment.

Deleted: person

Amend s. 601.465 (1m) (c) 5:

601.465 (1m) (c) 5. An international, federal, state or local regulatory or law enforcement agency, including the department of health services.

Amend s. 601.64 (3) (a) and (c) and (4):

601.64 (3) (a) *Restitutionary forfeiture.* Whoever violates an effective order issued under s. 601.41 (4), any insurance statute or rule, ~~or s. 149.13 or ch. 648~~ shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule, ~~or s. 149.13 or ch. 648~~, intentionally aids a person in violating an insurance statute or rule, ~~or s. 149.13 or ch. 648~~, or knowingly permits a person over whom he or she has authority to violate an insurance statute or rule, ~~or s. 149.13 or ch. 648~~ shall forfeit to the state not more than \$1,000 for each violation. If the statute or rule imposes a duty to make a report to the commissioner, each week of delay in complying with the duty is a new violation.

(4) *Criminal penalty.* Whoever intentionally violates or intentionally permits any person over whom he or she has authority to violate or intentionally aids any person in violating any insurance statute or rule of this state, s. 149.13, ch.

648, or any effective order issued under s. 601.41 (4) is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the statutes. Intent has the meaning expressed under s. 939.23.

Create ch. 648:

Chapter 648

648.01 Definitions. In this chapter:

- (1) "Care management organization" means an entity certified by and under contract with the department in accordance with s. 46.284 to provide long-term care support and health care management to Medicaid eligible adults with developmental or physical disabilities or Medicaid eligible adults identified by the department as frail elders as defined at s. 46.2805 (6v). "Care management organization" does not include any of the following:
- (a) An entity that contracts to provide a program of all-inclusive care for the elderly under 42 USC 1395eee or 1396u-4. Deleted: person
- (b) An entity that contracts to provide a program known as the Family Care Partnership program. Deleted: person
Deleted: who
- (c) An insurer subject to regulation under chs. 600 to 646, including an insurer who contracts with department to provide services that include hospital, physician or other acute care services. Deleted: Wisconsin
Deleted: partnership program under a federal waiver authorized under 42 USC 1315
- (d) Any other entity the commissioner exempts from this chapter. Deleted: person
- (2) "Department" means the department of health services.
- (3) "Permittee" means a care management organization issued a permit under this chapter. Deleted: person

648.02. Permit Required. (1) Care management organization permit. After December 31, 2009 a care management organization may not provide services under a contract with the department unless it has a permit under this chapter.

(2) Application. A care management organization applying for a permit shall submit all of the information required by the commissioner, in the required form, including:

- (a) Except as otherwise permitted by the commissioner, the names, and for the preceding 10 years, all addresses and all occupations of all controlling persons and directors and officers.
- (b) Business organization documents, including articles and bylaws if applicable.

- (c) A business plan approved by the department, including a projection of the anticipated operating results at the end of each of the next 3 years of operation, based on reasonable assumptions of income and operating expenses.

Deleted: first

- (d) Such other relevant documents or information as the commissioner reasonably requires after consulting with the department.

(3) Permit standards. The commissioner may issue a permit if the commissioner finds, after consulting with the department, all of the following:

- (a) All requirements of law have been met.
- (b) All the directors and principal officers of any controlling person and are trustworthy and competent and collectively have the competence and experience to engage in the proposed services.
- (c) The business plan is consistent with the interests of the care management organization's members and the public.
- (d) The care management organization is certified by, and contracts with, the department to participate in the care management program.

Deleted: person

Deleted: clients

648.05 Powers of the Commissioner. (1) Enforcement authority. The commissioner shall administer and enforce this chapter. The commissioner has the authority and power provided under ss. 601.41, 601.42, 601.43, 601.44, 601.62, 601.63, and 601.64 to enforce this chapter.

(2) Discipline. The commissioner may suspend or revoke a permit under this chapter if the commissioner finds, after consulting with the department:

- (a) The permittee violated a law or rule, including a rule setting financial standards.
- (b) The permittee is in financially hazardous condition.
- (c) The permittee is controlled or managed by persons who are incompetent or untrustworthy.
- (d) The permittee conceals records from the commissioner.
- (e) The permittee's business plan is not in the public interest or is not prudent.
- (f) The permittee ceases to be certified by the department or the permittee's contract with the department terminates.

(3) Standards set by rule. The commissioner may set standards for the financial condition of permittees by rule after consulting with the department.

(4) Summary order. (a) The commissioner, after consulting with the department, may make and serve an order on a permittee requiring it to cease and desist continuing to provide services under the department contract, or to take corrective measures, without notice and before hearing, simultaneously serving upon the permittee notice of hearing under s. 601.62, if:

1. It appears to the commissioner that irreparable harm to the property or business of the permittee or to the interests of its enrollees or participants, or the public, will occur unless the commissioner acts with immediate effect; and
2. The permittee is not in compliance with financial standards, or grounds exist to suspend or revoke the permit,

(b) An order issued under this subsection is effective immediately. The permittee has the rights provided under s. 601.62.

(c) The commissioner may keep proceedings under this subsection confidential.

648.10 Transactions with Affiliates.

(1) Information. A permittee, and a person attempting to acquire or having control of a permittee, shall report to the commissioner the information concerning the care management organization, its affiliates, and the person attempting to acquire control of the permittee that the commissioner requires by rule. The commissioner may promulgate rules prescribing the timing of reports under this subsection, including, but not limited to, requiring periodic reporting and the form and procedure for filing reports.

(2) Report for affiliates. A permittee may report on behalf of all affiliated entities if it provides all the information that would be required if each entity reported separately.

(3) Consent to jurisdiction. Every permittee shall promptly submit to the commissioner a statement from each of its affiliates that the affiliate agrees to be subject to the jurisdiction of the commissioner and the courts of this state for the purposes of this chapter. A governmental unit is not subject to this requirement and the commissioner may exempt other affiliates.

(4) Information order. The commissioner may, after consulting with the department, by order require any permittee, or any person attempting to acquire or having control of the permittee, to report information to the commissioner.

(5) Transactions with affiliates. Neither a permittee nor an affiliate of the permittee may enter into a transaction between the permittee and affiliate unless all of the following apply:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the permittee.

(b) The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and in accordance with generally accepted accounting principles permits ascertainment of charges relating to the transaction.

(c) The permittee's financial condition following any dividends or distributions to shareholders or a person having control of the permittee is reasonable in relation to the permittee's outstanding liabilities and adequate to its financial needs.

(d) The transaction complies with any other standard that the commissioner, after consulting with the department, prescribes by rule.

(6) Transactions subject to disclosure and disapproval.

(a) Affiliated transactions to be reported. 1. The commissioner, after consulting with the department, may promulgate rules requiring a permittee, a person attempting to acquire or having control of a permittee and affiliates of a permittee to report a transaction or a group or series of transactions, if all of the following are satisfied:

a. The transaction is between a permittee and a person attempting to acquire or having control of the permittee or an affiliate of the permittee, or the transaction directly or indirectly benefits the person or affiliate.

b. The transaction is, or the group or series of transactions are, material to the permittee.

2. Transactions that are material to a permittee for the purposes of subd. 1. include, but are not limited to, management contracts, service contracts and cost-sharing arrangements.

(b) No permittee, person attempting to acquire or having control of a permittee or affiliate of the permittee may enter into a transaction required to be reported to the commissioner under this subsection unless the permittee, person and affiliate report the transaction to the commissioner in the form and by the date before the effective date of the transaction that are prescribed by the commissioner by rule after consulting with the department. The commissioner may not require the transaction to be reported earlier than 30 days before the effective date.

(c) The commissioner, after consulting with the department, may prescribe by rule standards for determination of whether a transaction is material under this subsection.

(b) Disapproval. The commissioner may, within the period prescribed in par. (a)

disapprove any transaction reported under par. (a) if the commissioner finds, after consulting with the department, that it would violate the law or would be contrary to the interests of clients, the department or the public.

(c) Transactions prohibited. No permittee, person attempting to acquire or having control of the permittee or affiliate of the permittee may enter into a transaction that is not reported as required under par. (a) or that is disapproved by the commissioner under par. (c).

(d) Voidable transactions. If a permittee, person attempting to acquire or having control of the permittee or affiliate enters into a transaction in violation of this section, the permittee may void the transaction and obtain an injunction and recovery from the person or affiliate of the amount necessary to restore the permittee to its condition had the transaction not occurred. The commissioner may order a permittee to void the transaction, to commence an action against the person or affiliate or to take other action.

(e) Required financial condition. The commissioner, after consulting with the department, may promulgate rules for determining adequacy of financial condition under this section.

(f) Exemption if permittee reports. Par. (a) does not apply to a person attempting to acquire or having control of, or an affiliate of, a permittee, if the permittee reports on behalf of the person or on behalf of the affiliate and the transaction is not disapproved by the commissioner.

(7) Dividends and distributions.

(a) A permittee may not pay a dividend or distribution, and an affiliate of the permittee may not accept a dividend or distribution, unless the permittee reports the dividend or distribution to the commissioner at least 30 days before payment and the commissioner does not disapprove the dividend or distribution within that period.

(b) The commissioner, after consulting with the department, may promulgate rules under this section including, but not limited to, rules:

1. Prescribing the form and content of and procedure for filing reports under this subsection.

2. Exempting dividends or distributions under conditions that the commissioner determines will not jeopardize the financial condition of the permittee.

(c) A permittee may declare a dividend or distribution that is conditioned upon the permittee's compliance with this subsection. A declaration of a dividend or distribution under this subsection does not confer rights to the dividend or distribution unless this subsection is complied with and is void if the dividend or distribution is disapproved by the commissioner.

(d) In addition to any remedies available, a permittee may recover from the recipient any dividend or distribution paid in violation of this subsection.

(8) Duties of officers and directors.

(a) No director or officer of a permittee or of an affiliate of a permittee may permit, participate in or assent to a transaction or payment or acceptance of a dividend or distribution prohibited under this chapter.

(b) An officer or director of a permittee or of an affiliate of a permittee who knows, or reasonably should know that the permittee or affiliate has entered into a transaction or paid a dividend or distribution that violates this chapter shall report the transaction, dividend or distribution to the commissioner in writing within 30 days after attaining that knowledge. Section 601.42 (6) applies to a report under this section and the report is confidential unless the commissioner finds it necessary to disclose the report for the purpose of enforcing this chapter.

648.15 Change in control.

(1) **Approval required.** No proposed plan of merger or other plan for acquisition of control of a permittee may be executed unless the commissioner, after consulting with the department, approves the plan.

(2) **Grounds for disapproval.** The commissioner shall approve the plan under this section if the commissioner finds, after a hearing, that it would not violate the law or be contrary to the interests of the public, the department, or the enrollees or participants.

648.20 Enrollee hold harmless. (1) Hold harmless. An enrollee or participant of a care management organization is not liable for health care, service, equipment or supply charges that are covered under the care management organization's contract with the department.

(2) **Prohibited recovery attempts.** No person may bill, charge, collect a deposit from, seek remuneration or compensation from, file or threaten to file with a credit reporting agency or have any recourse against an enrollee, or participant, or any person acting on their behalf, for health care, service, equipment or supply charges for which the enrollee, participant or person acting on their behalf, is not liable under sub. (1).

(3) **Conditions not affecting the immunity.** The immunity of an enrollee or participant under subsections (1) and (2) is not affected by any of the following:

(a) A breach of or default on an agreement by the care management organization or failure of any person to compensate the provider.

(b) The insolvency of the care management organization or any person contracting with the care management organization or the commencement or the existence of conditions permitting the commencement of insolvency, delinquency or bankruptcy proceedings involving the care management

organization or other person, regardless of whether the care management organization or other person has agreed to compensate, directly or indirectly, the provider for health care, services, equipment or supplies for which the enrollee or participant is not liable under sub. (1).

(c) The inability of the provider or other person who is owed compensation for health care, services, equipment or supplies to obtain compensation from the care management organization.

648.30 Insolvency funding. (1) Deposit required. A permittee shall deposit an amount established by the DHS contract and not less than \$250,000 under s. 601.13. (additional revision to be submitted by Fred Nepple)

Deleted: of

(2) Release of deposit. A deposit under this section may be released only with the approval of the commissioner under s. 601.13 (10) and only in any of the following circumstances:

(a) To pay an assessment under sub. (3).

(b) To pay creditors of the permittee according to the priority determined by the department if the permittee is insolvent, dissolves or is subject to an insolvency proceeding, including a U.S. bankruptcy proceeding.

(3) Assessment. The department may assess an amount from each permittee's deposit for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees or participants of an insolvent or financially hazardous permittee. The department's assessment shall be allocated to each permittee's deposit in an amount that reflects the permittee's proportionate share of projected enrollment in the next annual period. The commissioner may authorize release, and the department of administration shall pay, the amount assessed to the department for the purposes of this subsection.

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capitation

(4) Recovery. The department may recover, and may file a claim, or bring civil action, to recover, from the insolvent or financially hazardous permittee any amount that the department assesses and pays under sub. (3). Any amount recovered shall be restored to the permittee's deposit in the same proportion as the assessment.

(5) Restoration. A permittee shall restore its deposit that is subject to an assessment under sub. (3) within 30 days after the assessment, unless the office, after consulting with the department, authorizes a longer period which shall not exceed two years.

Dodge, Tamara

From: Kahler, Pam
Sent: Wednesday, January 14, 2009 10:21 AM
To: Dodge, Tamara
Subject: FW: Chapter 648 changes

Tami:

Here is a response from Fred. I got a call from Tom Lawless this morning. He gave me his phone number for questions on this draft. It is 261-7810. I called him and told him you were working on this draft, not me, and that I would give you his phone number.

Pam

From: Nepple, Fred - OCI [mailto:Fred.Nepple@wisconsin.gov]
Sent: Wednesday, January 14, 2009 10:03 AM
To: Lawless, Thomas M - DHS; Mallow, Eileen K - OCI; Jablonsky, Sue; Kahler, Pam
Cc: Frye, Judith E - DHS
Subject: RE: Chapter 648 changes

Thanks Tom. You covered my item adequately.

Fred Nepple, General Counsel
Fred.Nepple@oci.state.wi.us
 Ph: (608)266-7726 FAX: (608)264-6228
 Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>
 PO Box 7873 Madison WI 53707-7873
 125 S Webster St Madison WI 53702

*****CONFIDENTIAL*****

This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.

From: Lawless, Thomas M - DHS
Sent: Tuesday, January 13, 2009 7:55 AM
To: Nepple, Fred - OCI; Mallow, Eileen K - OCI; Jablonsky, Sue; Kahler, Pam - LEGIS
Cc: Frye, Judith E - DHS
Subject: Chapter 648 changes

This version includes the changes we discussed last week in our work group meeting. Our starting point was the version sent by Fred on 12/23/08.

Tom Lawless
 Fiscal Mngmnt. & Business Svcs. Sectn. Chief
 Division of Long-Term Care
 Wisconsin Department of Health Services
 1 W. Wilson St., Room 518
 Madison, WI 53702

1/15/2009

Fax: (608) 266-5629

Phone: (608) 261-7810

Email: lawletm@dhfs.state.wi.us

Received permission from Sue to talk to
Tom Lawless

Dodge, Tamara

From: Jablonsky, Sue - DOA [sue.jablonsky@wisconsin.gov]
Sent: Thursday, January 15, 2009 8:37 AM
To: Dodge, Tamara
Subject: RE: Family Care draft

Tami-feel free to contact them directly

From: Dodge, Tamara [mailto:Tamara.Dodge@legis.wisconsin.gov]
Sent: Wednesday, January 14, 2009 4:27 PM
To: Jablonsky, Sue - DOA
Subject: RE: Family Care draft

Yesterday, Pam Kahler received the updated draft language from DHS and sent it on to me. Do you mind if I direct questions to DHS or would you like me to contact you first?

Thanks.
- Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Jablonsky, Sue - DOA [mailto:sue.jablonsky@wisconsin.gov]
Sent: Tuesday, January 13, 2009 9:11 AM
To: Dodge, Tamara
Subject: RE: Family Care draft

Yes, please

From: Dodge, Tamara [mailto:Tamara.Dodge@legis.wisconsin.gov]
Sent: Monday, January 12, 2009 8:57 AM
To: Jablonsky, Sue - DOA
Subject: RE: Family Care draft

Sue -

Would you like me to incorporate all of the recommended language into another version of the family care draft? I believe the draft I completed and sent to you was dated later than the proposed language.

- Tami

Tamara J. Dodge
Attorney

1/23/2009

Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Jablonsky, Sue - DOA [<mailto:sue.jablonsky@wisconsin.gov>]
Sent: Thursday, January 08, 2009 11:27 AM
To: Fox, Sabrina E - DOA; Dodge, Tamara
Subject: FW: Family Care draft

From: Mallow, Eileen K - OCI
Sent: Tuesday, November 25, 2008 10:06 AM
To: Lawless, Thomas M - DHS; Malofsky, Shelley F - DHS
Subject: FW: Family Care draft

Tom and Shelley – here's the revised draft of the Family Care legislation. Please let me know if you have any comments or would like to get together again. I know DOA is interested in getting the draft as soon as possible.

Eileen Mallow
Assistant Deputy Commissioner
608-266-7843
608-261-8579 (fax)
eileen.mallow@wisconsin.gov

From: Nepple, Fred - OCI
Sent: Monday, November 24, 2008 5:24 PM
To: Mallow, Eileen K - OCI
Cc: Walsh, Julie E - OCI
Subject: Family Care draft

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1/15/09 Tom Lawless 1-7810

LVM - asked if his draft was an explicit rejection of my language - or could I incorporate ideas into my draft.

Spoke to Tom Lawless

- Asked if he had seen my draft. He said no and asked if I had seen their language. I said, not until last week.

I asked if I ~~go~~ could go with my version and just make changes. He said he'd check w/OCI & get back tomorrow.

(Note: As of 1/21/09 - no response.)

Dodge, Tamara

From: Fox, Sabrina E - DOA [Sabrina.Fox@wisconsin.gov]
Sent: Friday, January 16, 2009 4:17 PM
To: Dodge, Tamara
Cc: Jablonsky, Sue - DOA
Subject: Updated language for OCI and DHS regulation of Family Care MCOs Draft
Attachments: Chapter 648_01132009_REV2.doc

Hi Tami:

Attached is an updated version of the stat language you are working on regarding the OCI and DHS regulation of Family Care MCOs. I believe you have been communicating with Sue Jablonsky on this and please continue to include her on the communications. Basically I am forwarding this on to you in an effort to get it to you as soon as possible. Please don't hesitate to let us know if you have any questions.

Thanks,
Sabrina

1/16/2009

Create 20.145 (1) (g) 4:

20.145 (1) (g) 4. All moneys received under s. 601.455 by the commissioner of insurance that are not allocated by the commissioner to the department of health services, for expenses related to administering ch. 648.

Create 20.435 (4) (ka) and (kb):

20.435 (4) (am) All moneys received under s. 601.455 by the commissioner of insurance that are allocated by the commissioner to the department of health services, for expenses related to financial certification, monitoring, and analysis of care management organizations that are subject to ch. 648.

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20.435 (4) (ap) All moneys received under s. 648.30 from an assessment for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees or participants of an insolvent or financially hazardous care management organization.

Amend s. 601.42 (4) and (7): 648.15

601.42 (4) Replies. Any officer, manager or general agent of any insurer authorized to do or doing an insurance business in this state or a care management organization, any person controlling or having a contract under which the person has a right to control such an insurer or care management organization, whether exclusively or otherwise, any person with executive authority over or in charge of any segment of such an insurer's or care management organization's affairs, any individual practice association or officer, director or manager of an individual practice association, any insurance agent or other care management organization licensed under chs. 600 to 646, any provider of services under a continuing care contract, as defined in s. 647.01 (2), any independent review organization certified or recertified under s. 632.835 (4) or any health care provider, as defined in s. 655.001 (8), shall reply promptly in writing or in other designated form, to any written inquiry from the commissioner requesting a reply.

Deleted: person

(7) Experts. The commissioner may employ experts to assist the commissioner in an examination or in the review of any transaction subject to approval under chs. 600 to 646 648. The care management organization, that is the subject of the examination, or that is a party to a transaction under review, including the person acquiring, controlling or attempting to acquire the insurer or care management organization, shall pay the reasonable costs incurred by the commissioner for the expert and related expenses.

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Amend s. 601.43 (1) (a) and (d): 648.20

601.43 (1) (a) *Insurers, other licensees and other care management organizations subject to regulation.* Whenever the commissioner deems it necessary in order to inform himself or herself about any matter related to the enforcement of chs. 600 to 647 648, the commissioner may examine the affairs and condition of any licensee or permittee under chs. 600 to 647 648 or applicant for a license or

Deleted: persons

permit, of any ~~care management organization or organization of persons doing~~ or in process of organizing to do an insurance business in this state, and of any advisory organization serving any of the foregoing in this state.

Deleted: person

(d) *Delivery of records to the office.* On order of the commissioner any licensee or permittee under chs. 600 to 647 ~~648~~ shall bring to the office for examination such records as the order reasonably requires.

Amend s. 601.44 (5) to (8) and (10): 648.25

601.44 (5) Report on examination. The examiner in charge of an examination shall make a proposed report of the examination that shall include such information and analysis as is ordered in sub. (1), Together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or the examinee's representatives at the option of the examiner in charge. Except for a proposed report of an examination of a care management organization under ch. 648, The a proposed report shall remain confidential until filed under sub. (6).

(6) Adoption and filing of examination report. The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under ch. 227, except that on demand by the examinee the hearing shall be private. Within 60 days after the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for public inspection, or the commissioner shall order a new examination. This subsection does not apply to a proposed report of an examination of, or an examinee that is, a care management organization.

(7) Copy for examinee. The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee. This subsection does not apply to a proposed report of an examination of, or an examinee that is, a care management organization.

(8) Copies for board. The examinee shall forthwith furnish copies of the adopted or finalized report to each member of its board.

(10) Report as evidence. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding commenced under ch. 645 or ch. 648, the examination report whether adopted by the commissioner or not shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

Create s. 601.45 (6):

601.45 (6) this section does not apply to a care management organization subject to ch. 648.

Create s. 601.455: 648.27

601.455 Care management organization costs.

(1) Costs to be paid by care management organizations. The reasonable estimate of costs of examinations under ss. 601.43 and 601.44 of care management organizations, review of applications, and financial monitoring and analysis of care management organizations by the office and the department of health services, including overhead and fixed costs, shall be paid by permittees under ch. 648 by a system of regular annual billings.

(2) Duty to pay. The commissioner shall annually determine the estimated costs subject to sub. (1) for the office and the department of health services.

The commissioner shall serve a request for payment on each care management organization who is a permittee allocating the cost to each permittee in an amount that the commissioner determines reflects the permittee's proportionate share of projected enrollment in the department's annual contracting period.

The permittee shall pay the amount determined by the commissioner within 30 days service of the request for payment.

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Amend s. 601.465 (1m) (c) 5: 648.30

601.465 (1m) (c) 5. An international, federal, state or local regulatory or law enforcement agency, including the department of health services.

Amend s. 601.64 (3) (a) and (c) and (4): 648.35

601.64 (3) (a) *Restitutionary forfeiture.* Whoever violates an effective order issued under s. 601.41 (4), any insurance statute or rule, ~~or s. 149.13 or ch. 648~~ shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule, ~~or s. 149.13 or ch. 648~~, intentionally aids a person in violating an insurance statute or rule, ~~or s. 149.13 or ch. 648~~, or knowingly permits a person over whom he or she has authority to violate an insurance statute or rule, ~~or s. 149.13 or ch. 648~~ shall forfeit to the state not more than \$1,000 for each violation. If the statute or rule imposes a duty to make a report to the commissioner, each week of delay in complying with the duty is a new violation.

(4) *Criminal penalty.* Whoever intentionally violates or intentionally permits any person over whom he or she has authority to violate or intentionally aids any person in violating any insurance statute or rule of this state, s. 149.13, ch.

648, or any effective order issued under s. 601.41 (4) is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the statutes. Intent has the meaning expressed under s. 939.23.

Create ch. 648:

Chapter 648

648.01 Definitions. In this chapter:

- (1) "Care management organization" means an entity certified by and under contract with the department in accordance with s. 46.284 to provide long-term care support and health care management to Medicaid eligible adults with developmental or physical disabilities or Medicaid eligible adults identified by the department as frail elders as defined at s. 46.2805 (6v). "Care management organization" does not include any of the following:

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- (a) An entity that contracts to provide a program of all-inclusive care for the elderly under 42 USC 1395eee or 1396u-4.

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- (b) An entity that contracts to provide a program known as the Family Care Partnership program.

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- (c) An insurer subject to regulation under chs. 600 to 646, including an insurer who contracts with department to provide services that include hospital, physician or other acute care services.

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- (d) Any other entity the commissioner exempts from this chapter.

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- (2) "Department" means the department of health services.

- (3) "Permittee" means a care management organization issued a permit under this chapter.

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648.02. Permit Required. (1) Care management organization permit. After December 31, 2009 a care management organization may not provide services under a contract with the department unless it has a permit under this chapter.

(2) Application. A care management organization applying for a permit shall submit all of the information required by the commissioner, in the required form, including:

- (a) Except as otherwise permitted by the commissioner, the names, and for the preceding 10 years, all addresses and all occupations of all controlling persons and directors and officers.
- (b) Business organization documents, including articles and bylaws if applicable.

(c) A business plan approved by the department, including a projection of the anticipated operating results at the end of each of the next 3 years of operation, based on reasonable assumptions of income and operating expenses.

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(d) Such other relevant documents or information as the commissioner reasonably requires after consulting with the department.

(3) Permit standards. The commissioner may issue a permit if the commissioner finds, after consulting with the department, all of the following:

(a) All requirements of law have been met.

(b) All the directors and principal officers of any controlling person and are trustworthy and competent and collectively have the competence and experience to engage in the proposed services.

(c) The business plan is consistent with the interests of the care management organization's members and the public.

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(d) The care management organization is certified by, and contracts with, the department to participate in the care management program.

648.05 Powers of the Commissioner. (1) Enforcement authority. The commissioner shall administer and enforce this chapter. The commissioner has the authority and power provided under ss. 601.41, 601.42, 601.43, 601.44, 601.62, 601.63, and 601.64 to enforce this chapter.

(2) Discipline. The commissioner may suspend or revoke a permit under this chapter if the commissioner finds, after consulting with the department:

(a) The permittee violated a law or rule, including a rule setting financial standards.

(b) The permittee is in financially hazardous condition.

(c) The permittee is controlled or managed by persons who are incompetent or untrustworthy.

(d) The permittee conceals records from the commissioner.

(e) The permittee's business plan is not in the public interest or is not prudent.

(f) The permittee ceases to be certified by the department or the permittee's contract with the department terminates.

(3) Standards set by rule. The commissioner may set standards for the financial condition of permittees by rule after consulting with the department.

(4) Summary order. (a) The commissioner, after consulting with the department, may make and serve an order on a permittee requiring it to cease and desist continuing to provide services under the department contract, or to take corrective measures, without notice and before hearing, simultaneously serving upon the permittee notice of hearing under s. 601.62, if:

1. It appears to the commissioner that irreparable harm to the property or business of the permittee or to the interests of its enrollees or participants, or the public, will occur unless the commissioner acts with immediate effect; and
2. The permittee is not in compliance with financial standards, or grounds exist to suspend or revoke the permit,

(b) An order issued under this subsection is effective immediately. The permittee has the rights provided under s. 601.62.

(c) The commissioner may keep proceedings under this subsection confidential.

648.10 Transactions with Affiliates.

(1) Information. A permittee, and a person attempting to acquire or having control of a permittee, shall report to the commissioner the information concerning the care management organization, its affiliates, and the person attempting to acquire control of the permittee that the commissioner requires by rule. The commissioner may promulgate rules prescribing the timing of reports under this subsection, including, but not limited to, requiring periodic reporting and the form and procedure for filing reports.

(2) Report for affiliates. A permittee may report on behalf of all affiliated entities if it provides all the information that would be required if each entity reported separately.

(3) Consent to jurisdiction. Every permittee shall promptly submit to the commissioner a statement from each of its affiliates that the affiliate agrees to be subject to the jurisdiction of the commissioner and the courts of this state for the purposes of this chapter. A governmental unit is not subject to this requirement and the commissioner may exempt other affiliates.

(4) Information order. The commissioner may, after consulting with the department, by order require any permittee, or any person attempting to acquire or having control of the permittee, to report information to the commissioner.

(5) Transactions with affiliates. Neither a permittee nor an affiliate of the permittee may enter into a transaction between the permittee and affiliate unless all of the following apply:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the permittee.

(b) The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and in accordance with generally accepted accounting principles permits ascertainment of charges relating to the transaction.

(c) The permittee's financial condition following any dividends or distributions to shareholders or a person having control of the permittee is reasonable in relation to the permittee's outstanding liabilities and adequate to its financial needs.

(d) The transaction complies with any other standard that the commissioner, after consulting with the department, prescribes by rule.

(6) Transactions subject to disclosure and disapproval.

(a) Affiliated transactions to be reported. 1. The commissioner, after consulting with the department, may promulgate rules requiring a permittee, a person attempting to acquire or having control of a permittee and affiliates of a permittee to report a transaction or a group or series of transactions, if all of the following are satisfied:

a. The transaction is between a permittee and a person attempting to acquire or having control of the permittee or an affiliate of the permittee, or the transaction directly or indirectly benefits the person or affiliate.

b. The transaction is, or the group or series of transactions are, material to the permittee.

2. Transactions that are material to a permittee for the purposes of subd. 1. include, but are not limited to, management contracts, service contracts and cost-sharing arrangements.

(b) No permittee, person attempting to acquire or having control of a permittee or affiliate of the permittee may enter into a transaction required to be reported to the commissioner under this subsection unless the permittee, person and affiliate report the transaction to the commissioner in the form and by the date before the effective date of the transaction that are prescribed by the commissioner by rule after consulting with the department. The commissioner may not require the transaction to be reported earlier than 30 days before the effective date.

(c) The commissioner, after consulting with the department, may prescribe by rule standards for determination of whether a transaction is material under this subsection.

(b) Disapproval. The commissioner may, within the period prescribed in par. (a)

disapprove any transaction reported under par. (a) if the commissioner finds, after consulting with the department, that it would violate the law or would be contrary to the interests of clients, the department or the public.

(c) Transactions prohibited. No permittee, person attempting to acquire or having control of the permittee or affiliate of the permittee may enter into a transaction that is not reported as required under par. (a) or that is disapproved by the commissioner under par. (c).

(d) Voidable transactions. If a permittee, person attempting to acquire or having control of the permittee or affiliate enters into a transaction in violation of this section, the permittee may void the transaction and obtain an injunction and recovery from the person or affiliate of the amount necessary to restore the permittee to its condition had the transaction not occurred. The commissioner may order a permittee to void the transaction, to commence an action against the person or affiliate or to take other action.

(e) Required financial condition. The commissioner, after consulting with the department, may promulgate rules for determining adequacy of financial condition under this section.

(f) Exemption if permittee reports. Par. (a) does not apply to a person attempting to acquire or having control of, or an affiliate of, a permittee, if the permittee reports on behalf of the person or on behalf of the affiliate and the transaction is not disapproved by the commissioner.

(7) Dividends and distributions.

(a) A permittee may not pay a dividend or distribution, and an affiliate of the permittee may not accept a dividend or distribution, unless the permittee reports the dividend or distribution to the commissioner at least 30 days before payment and the commissioner does not disapprove the dividend or distribution within that period.

(b) The commissioner, after consulting with the department, may promulgate rules under this section including, but not limited to, rules:

1. Prescribing the form and content of and procedure for filing reports under this subsection.

2. Exempting dividends or distributions under conditions that the commissioner determines will not jeopardize the financial condition of the permittee.

(c) A permittee may declare a dividend or distribution that is conditioned upon the permittee's compliance with this subsection. A declaration of a dividend or distribution under this subsection does not confer rights to the dividend or distribution unless this subsection is complied with and is void if the dividend or distribution is disapproved by the commissioner.

*the proposed
recipient*

(d) In addition to any remedies available, a permittee may recover from the recipient any dividend or distribution paid in violation of this subsection.

(8) Duties of officers and directors.

(a) No director or officer of a permittee or of an affiliate of a permittee may permit, participate in or assent to a transaction or payment or acceptance of a dividend or distribution prohibited under this chapter.

(b) An officer or director of a permittee or of an affiliate of a permittee who knows, or reasonably should know that the permittee or affiliate has entered into a transaction or paid a dividend or distribution that violates this chapter shall report the transaction, dividend or distribution to the commissioner in writing within 30 days after attaining that knowledge. Section 601.42 (6) applies to a report under this section and the report is confidential unless the commissioner finds it necessary to disclose the report for the purpose of enforcing this chapter.

648.15 Change in control.

(1) Approval required. No proposed plan of merger or other plan for acquisition of control of a permittee may be executed unless the commissioner, after consulting with the department, approves the plan.

(2) Grounds for disapproval. The commissioner shall approve the plan under this section if the commissioner finds, after a hearing, that it would not violate the law or be contrary to the interests of the public, the department, or the enrollees or participants.

648.20 Enrollee hold harmless. (1) Hold harmless. An enrollee or participant of a care management organization is not liable for health care, service, equipment or supply charges that are covered under the care management organization's contract with the department.

(2) Prohibited recovery attempts. No person may bill, charge, collect a deposit from, seek remuneration or compensation from, file or threaten to file with a credit reporting agency or have any recourse against an enrollee, or participant, or any person acting on their behalf, for health care, service, equipment or supply charges for which the enrollee, participant or person acting on their behalf, is not liable under sub. (1).

(3) Conditions not affecting the immunity. The immunity of an enrollee or participant under subsections (1) and (2) is not affected by any of the following:

(a) A breach of or default on an agreement by the care management organization or failure of any person to compensate the provider.

(b) The insolvency of the care management organization or any person contracting with the care management organization or the commencement or the existence of conditions permitting the commencement of insolvency, delinquency or bankruptcy proceedings involving the care management

organization or other person, regardless of whether the care management organization or other person has agreed to compensate, directly or indirectly, the provider for health care, services, equipment or supplies for which the enrollee or participant is not liable under sub. (1).

(c) The inability of the provider or other person who is owed compensation for health care, services, equipment or supplies to obtain compensation from the care management organization.

648.30 Insolvency funding. (1) Deposit required. A permittee shall deposit an amount established by the DHS contract and not less than \$250,000 under s. 601.13. (additional revision to be submitted by Fred Nepple)

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(2) Release of deposit. A deposit under this section may be released only with the approval of the commissioner under s. 601.13 (10) and only in any of the following circumstances:

(a) To pay an assessment under sub. (3).

(b) To pay creditors of the permittee according to the priority determined by the department if the permittee is insolvent, dissolves or is subject to an insolvency proceeding, including a U.S. bankruptcy proceeding.

(3) Assessment. The department may assess an amount from each permittee's deposit for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees or participants of an insolvent or financially hazardous permittee. The department's assessment shall be allocated to each permittee's deposit in an amount that reflects the permittee's proportionate share of projected enrollment in the department's annual contracting period. The commissioner may authorize release, and the department of administration shall pay, the amount assessed to the department for the purposes of this subsection.

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(4) Recovery. The department may recover, and may file a claim, or bring civil action, to recover, from the insolvent or financially hazardous permittee any amount that the department assesses and pays under sub. (3) Any amount recovered shall be restored to the permittee's deposit in the same proportion as the assessment.

(5) Restoration. A permittee shall restore its deposit that is subject to an assessment under sub. (3) within 30 days after the assessment, unless the office, after consulting with the department, authorizes a longer period which shall not exceed two years.